District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America; Oregon-Columbia Chapter, the Associated General Contractors of America, Inc. *and* Pacific Northwest Chapter of the Associated Builders & Contractors, Inc. Case 36-CE-15

July 12, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

On April 26, 1978, Administrative Law Judge William J. Pannier III issued the attached Decision in this proceeding. Thereafter, Respondents, the Charging Party, and the General Counsel all filed exceptions accompanied by supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., Portland, Oregon, its officers, agents, successors, and assigns; and District Council of Carpenters of Portland & Vicinity, Oregon State Council of the United Brotherhood of Carpenters and Joiners of America, and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, Portland, Oregon, their officers, agents, and representatives, shall take the action set forth in said recommended Order, except that the attached notices are substituted for that of the Administrative Law Judge.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT enter into, maintain, give effect to, or enforce those portions of article XIII, B, section 5, permitting "such action as [deemed] necessary," and of articles XIV through XVII, requiring workers to be withheld from contractors who fail to make proper contributions to trust funds, and allowing any economic action deemed necessary to be taken against employers who fail to make trust fund contributions, to the extent that such actions are authorized to maintain, give effect to, or enforce the subcontracting clause, article IV, of our collective-bargaining agreement with District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, and to the extent that articles XIII through XVII violate Section 8(e) of the Act.

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT enter into, maintain, give effect to, or enforce those portions of article XIII, B, section 5, permitting "such action as [deemed] necessary," and of articles XIV through XVII, requiring workers to be withheld from contractors who fail to make proper contributions to trust funds, and allowing any economic action deemed necessary to be taken against employers who fail to make trust fund contributions, to the extent that such actions are authorized to maintain, give effect to, or enforce the subcontracting

[1] In adopting the Decision of the Administrative Law Judge, we rely on the rationale enunciated in the Board's Decision in *Carpenters Local No. 944, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and Carpenters Local No. 235, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Woelke and Romero Framing, Inc.)*, 239 NLRB 241 (1978), in finding that the clauses herein would otherwise be protected by the construction industry proviso to Sec. 8(e) but for the self-enforcement aspects of those subcontracting clauses. See *International Union of Operating Engineers, Local No. 701, AFL-CIO; Oregon-Columbia Chapter, The Associated General Contractors of America, Inc. (Pacific Northwest Chapter of the Associated Builders & Contractors, Inc.)*, 239 NLRB 274 (1978).

Chairman Fanning dissents from his colleagues' conclusion that the clauses herein are outside the protection of the proviso to Sec. 8(e) because of self-enforcement provisions. Accordingly, he would dismiss the complaint herein. See his dissenting opinion in *Pacific Northwest Chapter, supra.*

clause, article IV, of our collective-bargaining agreement with Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and to the extent that articles XIII through XVII violate Section 8(e) of the Act.

DISTRICT COUNCIL OF CARPENTERS OF PORTLAND & VICINITY

OREGON STATE COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

SOUTHWEST WASHINGTON DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge: This case was heard by me in Portland, Oregon, on December 6, 1977. On September 14, 1977, the Regional Director for Region 19 of the National Labor Relations Board issued a complaint and notice of hearing, based upon an unfair labor practice charge filed on April 26, 1977, alleging that District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, herein collectively called Respondent Unions,[1] had violated Section 8(e) of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act. On September 20, the said Regional Director issued an amended complaint and notice of hearing, adding Oregon-Columbia Chapter, the Associated General Contractors of America, Inc., herein called Respondent Employer, as a respondent.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, upon the briefs, and upon my observation of the deameanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent Unions admit that Respondent Employer is an association of employers engaged in all types of construction work throughout the entire State of Oregon and the five counties in the southwestern portion of the State of Washington. They also admit that during the past year the employer-members of Respondent Employer, in the course and conduct of their businesses, purchased goods, materials, and supplies valued in excess of $50,000 which were shipped to said employer-members directly from States in the United States other than the States of Oregon and Washington, and, additionally, admit that, at all times material, Respondent Employer has been an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

However, Respondent Unions deny the allegations that employer-members of Respondent Employer have delegated their collective-bargaining authority to Respondent Employer for the purpose, *inter alia*, of negotiating and entering collective-bargaining contracts on behalf of its employer-members with the bargaining representatives of their employees, including Respondent Unions. The testimony left no dispute that one function of Respondent Employer was to negotiate collective-bargaining agreements with the representatives of employees in basically six crafts, including Respondent Unions, on behalf of its employer-members. Thus, the current agreement between Respondent Unions and Respondent Employer, effective from June 1, 1975, to May 31, 1980, contains a list of employer-members on whose behalf Respondent Employer had been negotiating, although this list has since been modified by additions and withdrawals. Each employer-member has executed a document, entitled "ASSIGNMENT OF BARGAINING RIGHTS," which authorizes Respondent Employer to act as its exclusive agent for the purpose of collective bargaining. Under the terms of the assignments, signatory employers agree "to conform to and be bound by" the existing labor agreement with Respondent Unions and to any new agreements reached by Respondent Employer with Respondent Unions until rescinding such authority in the manner prescribed in the Assignments.

In these circumstances, I find, contrary to Respondent Unions' contention, that there has been a delegation of authority by employer-members to Respondent Employer. Moreover, Respondent Employer has exercised that authority to execute a single contract on behalf of all its employer-members who employ carpenters. Accordingly, a multiemployer bargaining group, with a single overall unit, exists, and jurisdiction can be asserted over all employers in that group on the basis of their combined operations. *Marble Polishers, Machine Operators and Helpers, Local No. 121, AFL-CIO (Miami Marble & Tile Company)*, 132 NLRB 844, 845, fn. 1 (1961).

Therefore, the facts support the allegation, admitted by Respondent Unions, that at all times material Respondent Employer, including its employer-members, has been an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

At all times material, Respondent Unions have each been labor organizations within the meaning of Section 2(5) of the Act.

III. ISSUE

Whether the subcontracting restrictions of the collective-bargaining agreement between Respondent Employer and Respondent Employer and Respondent Unions violate Section 8(e) of the Act.

[1] The names of the Unions appear as amended at the hearing.

IV. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Collective-Bargaining Agreement*

As noted above, this agreement is effective from June 1, 1975, to May 31, 1980. It contains the following provisions pertinent to this proceeding:

Article IV

SUBCONTRACTORS CLAUSE

If an employer, bound by this Agreement, contracts or subcontracts, any work covered by this Agreement to be done at the job site of the construction, alteration or repair of a building, structure, or other work to any person or proprietor who is not signatory to this Agreement, the employer shall require such subcontractor to be bound to all the provisions of this Agreement, or such employer shall maintain daily records of the subcontractors employees job site hours, and be liable for payment of these employees wages, travel, Health-Welfare and Dental, Pension, Vacation and Apprenticeship contributions in accordance with this Agreement.

The Union agrees to notify the employer, person or proprietor with thirty (30) calendar days of any delinquent payment for wages, travel, Health-Welfare and Dental, Pension, Vacation and Apprenticeship contributions owed by the subcontractor, and to further issue a certificate to the employer when these payments have been made. (Clarification: With respect to fringes the 30 day period starts on the day after the report is due to the trust administrator.)

No work will be let by piecework, contract or lump sum direct with a journeyman, apprentice or trainee for labor services.

Article XIII

SETTLEMENT OR DISPUTES - STRIKES AND LOCKOUTS

* * * * *

B. NON-JURISDICTIONAL DISPUTES

Section 1. The jurisdiction of the Board of Arbitration shall be confined in all cases exclusively to questions involving the interpretation and application of any existing clause or provision of this Agreement.

Section 2. It is mutually agreed that there will be no strikes or lockouts, or cessation of work, by either party, for the duration of this Agreement, and all non-jurisdictional disputes arising under this Agreement shall be submitted to the procedure for the settlement of disputes as hereafter provided in Sections 4 and 5.

Section 3. No dispute, complaint, or grievance shall be recognized unless called to the attention of the Association and the Union within thirty (30) calendar days after the alleged violation was committed.

(a) In case of a dispute or difference arising out of this Agreement, both parties pledge their immediate cooperation in following the Grievance Procedures set forth herein.

(b) Saturdays, Sundays and holidays shall be excluded from the time limit specified in taking procedural steps and/or complying with the results thereof.

Section 4. In the settlement of grievances arising out of the interpretation or application of this Agreement, the following procedures shall be followed. It is understood that the following procedures will be halted at any Step when mutual agreement is reached.

* * * * *

Section 5. Should the parties involved in the dispute fail to comply with Steps 2, 3 and 4 as provided herein, upon presentation to them of the written decision, then all means of arbitration shall be considered exhausted. Either part in such case may take such action as they deem necessary, which action will not be considered in violation of any part of this Agreement.

In addition, there are specific provisions in the agreement relating to each of the funds referred to in article IV: health-welfare and dental (art. XIV), pension (art. XV), vacation (art. XVI), and appenticeship (art. XVII). In each of these articles, there are subsections which read:

> It shall be a violation of this Agreement for the Union to allow workmen covered by this Agreement to work for an employer who fails, after due notice, to make the proper contributions to the [appropriate name] Fund in accordance with the provisions of this Agreement.
>
> In the event an employer fails to make the monetary contributions in conformity with this Article of the Agreement, the Union is free to take any economic action against such employer it deems necessary, and such action shall not be considered a violation of this Agreement.

B. *Section 10(b)*

Although the agreement was executed in 1975, and thus outside the 6-month period prior to the filing of the charge on April 26, 1977, the words "enter into" in Section 8(e) of the Act are not construed to mean "only the initial execution of a proscribed agreement." *Dan McKinney Co., et al.*, 137 NLRB 649, 653 (1962). Rather, this language is construed broadly and encompasses the concepts of "maintenance, enforcement and reaffirmation." *International Organization of Masters, Mates and Pilots, AFL-CIO (Cove Tankers Corporation)*, 224 NLRB 1626 (1976); *Dan McKinney Co., supra* at 654. Consequently, where a party enforces such a clause or requests adherence to its provisions, its conduct satisfies the "enter into" language of Section 8(e) of the Act. *General Teamsters', Warehousemen and Helpers' Union, Local No. 890 (San Joaquin Valley Shippers' Labor Committee, et al.)*, 137 NLRB 641, 644 (1962); *Local 1149, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (American President Lines, Ltd.)*, 221 NLRB 456, fn. 2 (1975).

In the instant case, Respondent Employer admits in its answer that "to minimize the potential liability of its mem-

bers for breach of Article IV, it intends to continue giving effect to that article until it is ordered by the Board or a court not to do so." Moreover, during the 6-month period prior to the filing of the charge, Respondent Unions have sent several letters to Respondent Employer, notifying it of members who have "subcontracted work coming under the jurisdiction of the Brotherhood of Carpenters to a non-signatory subcontractor" and then restating, *in haec verba*, the above-quoted portion of article IV. While both Donald C. Staudenmier, executive secretary-treasurer of District Council of Carpenters of Portland & Vicinity, and Roy W. Coles, executive secretary of Oregon State Council of the United Brotherhood of Carpenters and Joiners of America, denied that these letters constituted grievances and denied that article XIII applied to article IV, the act of sending such letters to, as Staudenmier testified, "notify the individual contractor within 30 calendar days so that they have knowledge of it" satisfies the requirement of "maintenance, enforcement and reaffirmation."

Moreover, their denials of article XIII's application to article IV were neither convincing nor supported by other evidence. To the contrary, these denials were controverted directly by their own correspondence. Thus, Staudenmier's notices regarding the presence of nonsignatory subcontractors closed with the sentence, "looking forward to an early response or if possible a meeting at a mutually agreed upon time and location to discuss compliance over the above mentioned *grievance*." (Emphasis supplied.) More specifically, similar letters, concededly authored on behalf of Coles, opened with the sentences, "This communication from the Union is to serve notice in accordance with Article IV Subcontractor Clause and Article XIII, B. Non-Jurisdictional Disputes, Carpenters Labor Agreement." Further, it is conceded that at no point have Respondent Unions ever sought to amend the contract to make clear the purported inapplicability of article XIII, which by its very terms grants to the board of arbitration jurisdiction over "questions involving the interpretation and application of *any* existing clause or provision of this Agreement," (emphasis supplied) to article IV. Finally, while Coles claimed to have told the "membership" that article XIII did not apply to article IV, no witnesses were called to corroborate his testimony in this regard. Absent an explanation for this failure, it is fairly inferrable that Coles' testimony could not be corroborated. *Kaiser Foundation Hospitals, et al.*, 228 NLRB 468 (1977).

In these circumstances, I find that article XIII applies to article IV and that both Staudenmier and Coles were seeking enforcement of article IV by their letters with respect to nonsignatory subcontractors sent during the 6-month period prior to the filing of the charge. Therefore, I find that a preponderance of the evidence shows that there has been "maintenance, enforcement and reaffirmation" of article IV during the 10(b) period which satisfies the "enter into" language of Section 8(e) of the Act.

C. *The Nature of Article IV: Primary or Secondary*

Section 8(e) of the Act prohibits unions and employers from entering into agreements which allow the latter to refuse, *inter alia*, to do business with any other person. The object of its enactment was to overrule and reverse the prior interpretation of the Act permitting such agreements. 8 Kheel, Labor Law, Sec. 39.02 (1975). However, notwithstanding the breadth of its proscription, Section 8(e) does not prohibit every agreement to which it could be applied literally. "Congress, in enacting §8(e), had no thought of prohibiting agreements directed to work preservation." *National Woodwork Manufacturers Association, et al.* v. *N.L.R.B.*, 386 U.S. 612, 640 (1967). The most obvious illustration of such a nonprohibited clause is one which proscribes subcontracting absolutely. Although literally an agreement not to do business with another person, it is not, of itself, a violation of Section 8(e) of the Act, since it serves to protect the work of employees in the unit represented by the union. See, e.g., *Service and Maintenance Employees' Union, Local No. 399, AFL CIO (Kal Efron, d/b/a Superior Souvenir Book Company)*, 148 NLRB 1033, 1034-35 (1964).

A major problem, however, arises once the parties go beyond this point and allow the employer to subcontract work, but restrict the terms upon which it can do so. In such situations, a distinction must be drawn between restrictions which protect the union's "legitimate interest in preventing the undermining of work opportunities and standards of employees in a contractual bargaining unit . . . ," e.g., a primary or work preservation objective, and restrictions which go beyond that valid objective by controlling "the employment practices of firms which seek to do business with the employer. . . ." *General Teamsters Local 386, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Construction Materials Trucking, Inc.)*, 198 NLRB 1038 (1972). "The question is whether the contract provisions in question extend beyond the employer and are aimed really at the union's difference with another employer." *Local No. 636, United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of United States and Canada, AFL CIO [Detroit Edison Co.]* v. *N.L.R.B.*, 278 F.2d 858, 864 (D.C. Cir. 1960). To satisfy the primary or work preservation purpose, the clause must be "limited to requiring that subcontractors observe 'the equivalent of union wages, hours, and the like.' " *Local 437, International Brotherhood of Electrical Workers, AFL-CIO (Dimeo Construction Co.)*, 180 NLRB 420, 421 (1969).

Article IV, section 3, of the agreement in the instant case provides that Respondent Unions are recognized as the representative of "all workmen falling within the jurisdiction of the agreement . . . ." While the record shows that Respondent Employer's employer-members do not employ such "workmen" on all sites and at all times, even on sites where they are employed, they do employ employees covered by the agreement. Consequently, there is a "principal work unit" whose wages and job opportunities Respondent Unions have a valid interest in protecting. *American Federation of Television and Radio Artists (AFTRA), New York Local (Westinghouse Broadcasting Company, Inc. (Del.))*, 160 NLRB 241, 246-247 (1966). They have chosen to do this through article IV. Since that article permits unit work to be subcontracted, its legality must be measured by whether the conditions imposed therein are "limited to requiring that subcontractors observe 'the equivalent of union

wages, hours, and the like.' " *Local 437, IBEW (Dimco Construction Co.), supra.*

Under the terms of article IV, employer-members of Respondent Employer can subcontract work to a subcontractor not signatory to the agreement only if one of two alternative conditions are satisfied: Either the subcontractor must agree "to be bound to all the provisions of this Agreement" or the employer-member must be liable for payment of the "wages, travel, Health-Welfare and Dental, Pension, Vacation and Apprenticeship contributions in accordance with this Agreement," as measured by the hours worked by subcontractors' employees.[2] Inasmuch as the first alternative is not restricted to economic matters, cf. *Teamsters Local 386 (Construction Materials Trucking, Inc.), supra,* but extends to "all the provisions" of the agreement between Respondent Unions and Respondent Employer, it would encompass such matters as recognition, union security, grievance procedure, and other noneconomic terms. Yet, agreement to such matters is not needed to preserve the work opportunities and standards of "workmen" in the principal work unit. Accordingly, on its face, this alternative exceeds the bounds of restriction necessary to protect their interests. *Local 437, IBEW (Dimeo Construction Co.), supra; Teamsters Local 386 (Construction Materials Trucking, Inc.), supra; J. K. Barker Trucking Co., et al., supra,* 181 NLRB at 518 (1970). It is a secondary provision.

Nor does the second alternative stand in a better light. For, if a nonsignatory subcontractor does not agree to "be bound to all the provisions" of the agreement, the employer-member must make the payments to the benefit funds[3] automatically and without regard to whether the subcontractor is already paying equivalent costs and benefits to its employees. Consequently, the requirement that the employer-member pay the $1.93 per hour exceeds the bounds necessary to protect Respondent Unions' work standards. Moreover, as found in *Walsh, supra,* the payments made to the funds would not be used for the benefit of employees of the nonsignatory contractors, but, as Coles conceded, would be used for benefit of the general membership participating in the funds. Thus, the payment of these amounts is "strictly a penalty." *Orange Belt District Council of Painters #48, AFL-CIO, et al. (Calhoun Drywall Company),* 153 NLRB 1196, 1200-01 (1965). In short, the second alternative is also a secondary provision.

Therefore, contrary to the contention of Respondent Unions, article IV is a secondary clause which violates Section 8(e) of the Act. However, this does not end the inquiry in this matter, for Respondent Unions further urge that, even if secondary, article IV is protected by the first proviso to Section 8(e) of the Act: "That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work . . . ." In response, the other parties argue that this proviso is inapplicable because it does not apply to situations where a party, such as Respondent Unions, is entitled to resort to nonjudicial self-help to enforce its provisions and, further, that since it is not carefully tailored to apply only to sites and times when employees in the principal work unit are employed alongside the subcontractors' employees, it is not entitled to the protection of the proviso under the Supreme Court's decision in *Connell Construction Co., Inc.* v. *Plumbers and Steamfitters Local Union No. 100, etc.,* 421 U.S. 616 (1975).

D. *The Self-Help Provisions*

It is settled that "although a contract within the construction industry proviso to Section 8(e) is exempt from the operation of that section, it may be enforced only through lawsuits and not by threats, coercion, or restraint proscribed by Section 8(b)(4)(B)." *Ets-Hokin Corporation,* 154 NLRB 839, 842 (1965), enfd. *sub nom. N.L.R.B.* v. *International Brotherhood of Electrical Workers, AFL-CIO, Local No. 769,* 405 F.2d 159, 162-163 (9th Cir. 1968), cert. denied 395 U.S. 921 (1969). This is so because Congress, in leaving lawful certain onsite "hot cargo" agreements, did not intend to change the law prohibiting nonjudicial enforcement of such contracts. *Local Union No. 48 of Sheet Metal Workers International Association* v. *The Hardy Corporation,* 332 F.2d 682, 686-687 (5th Cir. 1964). The policy underlying that proscription, in turn, was based upon "practical judgment on the effect of union conduct in the frame work of actual labor disputes and what is necessary to preserve to the employer the freedom of choice that Congress had decreed." *N.L.R.B.* v. *Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL [Sand Door & Plywood Co.], et al.,* 357 U.S. 93, 107 (1958). Thus, if such self-help clauses were held valid, they could be enforced by judicial action with the result that "the courts could be used to protect the very self-help action in support of a construction site 'hot cargo' clause that Congress clearly intended to prohibit." *Muskegon Bricklayers Union #5, Bricklayers, Masons and Plasterers International Union of America, (AFL-CIO) (Greater Muskegon General Contractors Association),* 152 NLRB 360, 365 (1965), enfd. 378 F.2d 859 (6th Cir. 1967).[4]

[2] This interpretation of the second alternative is the one confirmed by the Supreme Court in *Walsh* v. *Schlecht, et al.,* 429 U.S. 401, 409-410 (1977). Contrary to Respondent Unions' assertion, the Court did not resolve the issue of whether art. IV was lawful under Sec. 8(e) of the Act, nor, so far as the opinion discloses, did any party raise the issue of the legality of art. IV under Sec. 8(e) of the Act in arguing the matter before the Court. Accordingly, the Court's decision is not dispositive of the issue presented in the instant case. Neither, contrary to Respondent Union's contention, was the primary nature of art. IV resolved in *Griffith Company et al.* v. *N.L.R.B.,* 545 F.2d 1194 (9th Cir. 1976). True, the circuit court did refer to art. IV as providing "a less coercive method . . . given tacit approval by the Supreme Court . . . ." *Id.* at 1203, fn. 14. However, this reference was made in the context of the court's discussion of the *means* by which the union in that case had chosen to collect from delinquent employers—that is, withholding employee services from a contractor who, essentially, was obliged to accept liability for the trust fund delinquencies of a subcontractor with whom that contractor had subcontracted. Thus the court's reference to "a less coercive method." It is settled that placing the general contractor in the position of surety for the benefits' payments of a nonsignatory subcontractor is not inherently a secondary objective—in the proper circumstances and so long as such liability is not enforced by improper methods. *General Teamsters, Chauffeurs, Warehousemen and Helpers, Local 982, etc., et al. (J. K. Barker Trucking Co., et al.),* 181 NLRB 515, 520 (1970). But the court did not consider the extent to which this could be done.

[3] At the time of the hearing, this amounted to $1.93 per hour for each employee.

[4] There was, of course, no self-help resorted to in the instant case. But, this is not significant, since Sec. 8(b)(4)(B) of the Act applies to situations where self-help occurs, while Sec. 8(e) applies where it is permitted by an agreement.

the circumstances specified in the proviso. Yet, Section 8(e) of the Act and its first proviso represent an effort to balance the policy of preventing "top-down" organizing with that of mitigating jobsite friction. The choice is one which Congress has made. In an effort to avoid potential jobsite friction, it in effect placed a limitation on the scope of the basic proscription, thereby limiting the extent to which "top-down" organizing is prohibited by Section 8(e) of the Act. Nonetheless, "Congress could reasonably take one firm step toward the goal of eliminating ["top-down" organizing] without accomplishing its entire objective in the same piece of legislation." *Califano* v. *Jobst*, 98 S.Ct. 95, 101 (1977).

It is equally clear that the subcontracting restriction in Respondents' agreement will not insure, to a certainty, that Respondent Unions' members will never have to work alongside nonunion personnel. Nor is that restriction confined to sites and times at which Respondent Unions' members will be working. Again, however, this is the result of a choice which Congress has made as to the means by which its purpose of mitigating potential site friction is to be attained. Congress could have chosen another method. But, it selected one whereby each union is permitted to have a restrictive subcontracting clause with the contractor whose employees that union represents. The collective effect of such individual agreements—each between a union representing employees in a principal work unit and the contractor or subcontractor employing those employees—is a reduced potential for union and nonunion personnel working on the same site.[7] Thus, the fact that Respondent Unions do not have members working on all sites or at all times does not negate the applicability of the proviso to article IV. For that article tends to insure that the work of the principal work unit will be performed by union employees and, to that extent, tends to insure that tranquility on the site will not be disturbed by the presence of nonunion "workmen" performing the work of Respondent Union's bargaining unit. In this manner, article IV promotes the objective sought by Congress in enacting the proviso.

Conversely, the fact that the subcontracting clause does not insure against other subcontractors, whose employees perform work other than that performed by employees in Respondent Unions' principal work unit, employing nonunion employees on sites where Respondent Unions' members are working does not render the proviso inapplicable to article IV. Certainly there can be no doubt that Respondent Unions would like to provide such assurance. However, in the proviso, Congress did not require unions to seek clauses applying to nonunit work. Nor, to invoke the protection of the proviso, did Congress require the contracting parties to condition their agreements on the union status of employees by other contractors and subcontractors. Instead, in an effort to mitigate potential jobsite friction, Congress imposed no requirements beyond those specified in the proviso. That these requirements do not insure absolutely against the possibility of union and nonunion personnel working side by side on jobsites is not fatal to subcontracting agreements negotiated pursuant to the proviso, since Congress can enact legislation which takes only "one firm step" in that direction without having to accomplish "its entire objective in the same piece of legislation." *Califano* v. *Jobst*, *supra*.

In sum, I find that the rationale of *Connell* is not applicable to situations, such as that presented here, where there is a principal work unit for which the union is the bargaining representative, the subcontracting clause pertains to the subcontracting of unit work, the subcontracting clause is part of a collective-bargaining agreement with the contractor who employs the employees in the principal work unit, and there is no evidence that the subcontracting clause is being used as a device to achieve ulterior purposes unrelated to that collective-bargaining relationship.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Unions and Respondent Employer set forth above, occurring in connection with Respondent Employer's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., and its employer-members, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America are each a labor organization within the meaning of Section 2(5) of the Act.

3. By entering into, maintaining, and giving effect to self-help provisions applicable to article IV of their 1975-80 collective-bargaining agreement, Oregon-Columbia Chapter, The Associated General Contractors of America, Inc.; District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America have violated Section 8(e) of the Act.

4. No other aspects of the agreement mentioned in Conclusion of Law 3, above, violate Section 8(e) of the Act.

THE REMEDY

Having found that Oregon-Columbia Chapter, The Associated General Contractors of America, Inc.; District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and, Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, engaged in certain unfair labor practices, I shall

[7] No evidence has been presented to show that any significant number of sites on which employer-members work are other than common sites, i.e., sites on which they are not working alone, but on which other employees, employed by other contractors and subcontractors, are also working.

recommend that they be ordered to cease and desist therefrom and that they take certain affirmative action to effectuate the policies of the Act.[8]

Upon the foregoing findings of fact, and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[9]

Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., its officers, agents, successors, and assigns, and District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, their officers, agents, and representatives, shall:

1. Cease and desist from entering into, maintaining, giving effect to, or enforcing the self-help portions of articles XIII through XVII insofar as they apply to the subcontracting clause, article IV, found in their collective-bargaining agreement, to the extent found unlawful herein and to the extent that they violate Section 8(e) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., shall post at its business office(s) and mail to its employer-members copies of the attached notice marked "Appendix A."[10] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by an authorized representative of Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., shall be posted and mailed immediately upon receipt thereof, and those posted shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by Oregon-Columbia Chapter, The Associated General Contractors of America, Inc., to insure that said notices are not altered, defaced, or covered by any other material.

(b) District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America shall post at their business offices and meeting halls and shall mail to their constituent member locals on whose behalf they negotiated the current collective-bargaining agreement copies of the attached notice marked "Appendix B."[11] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by authorized representatives of District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America, as applicable, shall be posted and mailed by them immediately upon receipt thereof, and those posted shall be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by District Council of Carpenters of Portland & Vicinity; Oregon State Council of the United Brotherhood of Carpenters and Joiners of America; and Southwest Washington District Council of the United Brotherhood of Carpenters and Joiners of America to insure that said notices are not altered, defaced, or covered by any other material.

(c) Deliver to the Regional Director for Region 19 signed copies of the notices which each signs in sufficient number for posting by Pacific Northwest Chapter of the Associated Builders & Contractors, Inc., they being willing, at all locations where notices are customarily posted.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

[8] Absent a showing of special need for extraordinary relief, the standard Board remedy for violations of the type committed here shall be provided.

[9] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[11] See fn. 10, *supra*.